IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

Ramesh Kumar & Ors. **VS**. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.265/2006
against the judgment and order dated 19.12.2005
passed in S.B. Civil Writ Petition No.2207/1986.

Date of judgment : 9th May, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. K.N. Joshi for the appellant.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the appellant.

The learned Single Judge has disposed of the writ petition filed by the respondent No.5 by directing the respondent Urban Improvement Trust / Municipality, Udaipur to look into the matter and take appropriate action in the matter. The respondent No.5 had filed a writ petition in 1986 alleging that while he was asked to surrender his place of

business at Ghantagar, Udaipur ad measuring 3' x 5', the Municipal Council has agreed to allot him another land at Sarafa Bazar with stipulation that for excess area, petitioner shall pay price. Since the Municipal Council has failed to honour this agreement, petition was filed. The petitioner has proposed that plot No.40C at Hathipole Delhi Gate Scheme may be allotted to him.

The respondents No.5 and 6 had purchased the plot No.24G in Hathipol Delhi Gate Scheme at auction held on 17.5.1976 and had deposited full price of it. But the said shop could not be delivered to the buyers on 20.1.1985, the Chairman, UIT directed to allot the plot No.40B to the said buyers in lieu of plot No.24G, but the same was also not delivered to them. This led to filing of suit by them in which an injunction was issued against UIT in respect of plot No.40C.

In this background the respondents No.5 and 6 were impleaded as parties to the petition.

The Municipal Council proposed that it is proper to pay compensation to petitioner and that since it is proposing itself to construct shops at plot No.40 C, it is not available for allotment.

The stand taken by Municipal Council before learned Single

Judge was that as per the factual position of site, the plot No.40C is not available for allotment but Municipal Council, Udaipur is still prepared to give one of the shops which may be constructed by the Municipal Council, Udaipur, as the Municipal Council intends to raise construction there and the land of plot No.40C is available for that purpose. In case the Municipal Council, Udaipur is not proposing to raise construction of the shops as proposed in the map annexed with proposal dated 21.2.2002 then the Municipal Council, Udaipur is prepared to give land of one shop as shown in the map annexed with the proposal.

Taking into consideration this aspect of the matter the learned Single Judge directed, in respect of the petitioner Bhanwar Lal through his legal representatives, that Municipal Council / UIT to consider the case of the petitioner for allotment of a shop as he is prepared to pay the cost of the land at the rate prevailing on 19.12.2005.

However, while considering the case of the respondents No.5 and 6 in the writ petition, and appellants before us, the Court observed that the said respondents have purchased the plot in public auction in 1976 and because of the interim order passed in favour of respondents No.5 and 6 as well as the petitioner, the possession of the same was not given to him as per annex.R/2 submitted by the respondent in the writ petition. The present appellants were to be alloted plot No.40E in place of

plot No.24G, however, the respondents made request for allotment of plot No.40C to the petitioner. The entire amount for the plot was paid before more than 30 years.

Keeping in view the aforesaid circumstances and the statement made before the Court, the learned Single Judge directed the respondent, Secretary, UDH to examine the matter and pass appropriate order for allotment of plot in the light of the fact that the respondents No.5 and 6 have purchased the land in 1976 and deposited the entire amount with the Urban Improvement Trust. While making this direction, it was made clear that respondents No.5 and 6 shall not lay their claim for allotment of plot No.40C on which construction of shops was made.

The learned counsel for the appellants has stated that he is not concerned with the plot No.40C and he has no grievance about allotment of the said plot but he is satisfied that any plot in lieu of plot No.24G be allotted to him. He has also stated that since plot No.40C has not been subjected to construction and same is also available for allotment.

We are of the opinion that the appellants have no specific reason about taking plot No.40C in lieu of the plot No.24G which they purchased at auction in 1976 and deposited full price, they cannot be

considered as a party aggrieved with the judgment of learned Single Judge. The respondents shall do well to allot the appellants a plot in lieu of the original plot purchased by them within a period of one month in pursuance of the directions of the learned Single Judge.

Subject to aforesaid, the appeal fails and is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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